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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

# Protecting human rights and fundamental freedoms while countering terrorism**

## Report of the Secretary-General

*Summary*

The General Assembly, in its resolution 60/158, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and called upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism. The present report is submitted pursuant to resolution 60/158. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the High Commissioner for Human Rights, the Human Rights Council and its various special procedures mandates, and the human rights treaty bodies. It reports on the consideration of the United Nations human rights system on current issues, including diplomatic assurances and the transfer of individuals suspected of involvement in terrorist activity, and draws a number of conclusions in this regard.

* A/61/150.

** This report was submitted after the deadline in order to reflect the most up-to-date information possible.

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# I. Introduction

1. The General Assembly, in its resolution 60/158, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law. It reaffirmed the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights, to respect certain rights as non-derogable in any circumstances. It recalled, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlined the exceptional and temporary nature of any such derogations. The Assembly called upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism. It also urged States to fully respect non-refoulement obligations under international refugee and human rights law.

2. The Assembly welcomed the ongoing dialogue established, in the context of the fight against terrorism, between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encouraged the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies. It encouraged States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encouraged them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies. It also encouraged all relevant special procedures and mechanisms of the Commission on Human Rights, as well as the United Nations human rights treaty bodies, to cooperate, within their mandates, with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and encouraged the Special Rapporteur to work closely with them to coordinate efforts in order to promote a consistent approach on this subject.

3. The Secretary-General was requested to submit a report on the implementation of resolution 60/158 to the Assembly at its sixty-first session. The present report also responds to the request of the Commission on Human Rights for the High Commissioner to report to the General Assembly on implementation of Commission resolution 2005/80.

# II. Recent developments in the United Nations in the area of human rights and counter-terrorism

4. In its comprehensive review report of 16 December 2005 (S/2005/800), which was endorsed by the Council, the Counter-Terrorism Committee reiterated that States must ensure that any measure taken to combat terrorism should comply with all their obligations under international law and that they should adopt such measures in accordance with international law, in particular human rights law, refugee law and humanitarian law. It also stressed that the Counter-Terrorism Committee Executive Directorate (CTED) should take this into account in the course of its activities. On 25 May 2006, the Committee agreed on a policy note to guide CTED in this regard, which provides that when analysing States'

implementation of resolution 1373 (2001), preparing draft letters to States, and organizing visits, CTED should, as appropriate:

(a) Provide advice to CTC, including for its ongoing dialogue with States on their implementation on Security Council resolution 1373 (2001), on international human rights, refugee and humanitarian law, in connection with identification and implementation of effective measures to implement resolution 1373 (2001);

(b) Advise the CTC on how to ensure that any measures States take to implement the provisions of resolution 1624 (2005) comply with their obligations under international law, in particular international human rights law, refugee law, and humanitarian law;

(c) Liaise with the Office of the High Commissioner for Human Rights and, as appropriate, with other human rights organizations in matters related to counter-terrorism.

5. The policy further provided that the CTC and CTED, under direction of the Committee, should incorporate human rights into their communications strategy, as appropriate, noting the importance of States ensuring that in taking counter-terrorism measures they do so consistent with their obligations under international law, in particular human rights law, refugee law and humanitarian law, as reflected in the relevant Security Council resolutions.

6. In the World Summit Outcome document (A/60/L.1), the General Assembly welcomed the Secretary-General's identification of elements of a counter-terrorism strategy and called for these elements to be developed by the Assembly with a view to adopting and implementing a strategy to promote comprehensive, coordinated and consistent responses, at the national, regional and international levels, to counter terrorism, which also takes into account the conditions conducive to the spread of terrorism (para. 82). With a view to assisting the Assembly in this regard, on 2 May the Secretary-General presented a detailed proposal for a global counter-terrorism strategy in his report "Uniting against terrorism: Recommendations for a global counter-terrorism strategy" (A/60/825). The proposed strategy is grounded in the recognition that human rights and security are complementary and mutually reinforcing goals, and elaborates on five pillars: dissuading people from resorting to terrorism or supporting it; denying terrorists the means to carry out an attack; deterring States from supporting terrorism; developing State capacity to defeat terrorism; and defending human rights. It stresses the need to address the impact of terrorism on a broad range of human rights, including the rights of victims; the active participation of civil society; the economic and social toll of terrorism, including the setback of development efforts; the erosion of the rule of law; the need to address root causes, or conditions conducive to exploitation by terrorists; and the importance of developing effective criminal justice systems. Informal consultations based on the proposed strategy are ongoing, under the joint chairmanship of Spain and Singapore.

**Human Rights Council**

7. By its resolution 60/251, the General Assembly decided to establish the Human Rights Council, with a mandate to promote universal respect for the protection of all human rights and fundamental freedoms for all; address situations of violations of human rights, including gross and systematic violations, and make

recommendations thereon, and promote the effective coordination and the mainstreaming of human rights within the United Nations system. The establishment of the new Human Rights Council offered another opportunity to incorporate human rights into global counter-terrorism efforts.

8. At its first session in June 2006, the Council held discussions on the implementation of resolution 60/251 and took a number of decisions. Of particular significance to strengthening the rule of law in countering terrorism was the adoption by the Council of the International Convention for the Protection of All Persons from Enforced Disappearance. The Convention affirms the right of any victim to know the truth about the circumstances of an enforced disappearance, and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end. It provides that no one should be subjected to enforced disappearance and that each State party should take appropriate measures to ensure that enforced disappearance constitutes an offence under its criminal law. Furthermore, the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law. According to the terms of the Convention, each State party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness. In its resolution 1/1, the Council recommended to the General Assembly the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance.

9. The Council also welcomed the entry into force on 22 June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 18 December 2002 by the General Assembly in its resolution 57/199.

**Special procedures**

10. At its sixty-second and last session, the Commission on Human Rights adopted resolution 2006/1, entitled "Closure of the Work of the Commission on Human Rights", which referred all reports to the Human Rights Council for consideration at its first session in June 2006. At its first session, the Council adopted resolution 1/102 through which it decided to consider at its next session the reports of all special procedures submitted to the sixty-second session of the Commission on Human Rights.

11. The Special Rapporteur on the promotion and protection of human rights while countering terrorism reported to the Commission on Human Rights on his activities between 8 August and 15 December 2005, including communications sent by the Special Rapporteur and replies received thereto from Governments (E/CN.4/2006/98). The report which, together with the report on his mission to Turkey in February 2006, is awaiting consideration by the Human Rights Council, discusses elements of an international definition of terrorism with regard to the relevance of this issue for human-rights-conform responses to terrorism. It also contains an analysis of the role of human rights in the review of Member States' reports to the Counter-Terrorism Committee of the Security Council and sets out possible forms of cooperation between the Special Rapporteur and the Committee. Issues of major importance, such as the rights of victims of terrorism, root causes of terrorism, and whether non-State actors can violate human rights, also are analysed

in the report. In his report to the General Assembly, the Special Rapporteur summarizes the activities he has undertaken since December 2005, and reflects upon the impact of counter-terrorism on freedom of association and peaceful assembly, and relevant international standards.

12. During the course of the reporting period, the Special Rapporteur held meetings with other special procedures mandate-holders, such as the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Chairperson of the Working Group on Arbitrary Detention, the independent expert on minority issues, and the Special Representatives of the Secretary-General on internally displaced persons and on the situation of human rights defenders. Equally, and with the aim of avoiding duplication and creating synergies, the Special Rapporteur held meetings with thematic and regional units of the Office of the High Commissioner for Human Rights, notably to ensure complementarity with regard to the High Commissioner's mandate on the promotion of human rights while countering terrorism. In addition, the Special Rapporteur has held meetings with the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime and worked closely with the United Nations Counter-Terrorism Implementation Task Force (CTITF).

13. Other special procedures mandate-holders have addressed a broad range of issues related to the impact of terrorism on human rights, within the context of their mandates and with due consideration to the mandate of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, by sending urgent appeal letters, issuing press releases, preparing thematic studies and conducting country visits. The following paragraphs provide examples of their recent activities.

14. In his report, the Special Rapporteur on the question of torture (E/CN.4/2006/6) emphasized the importance of remaining vigilant in relation to practices such as the use of diplomatic assurances that attempt to erode the absolute prohibition on torture in the context of counter-terrorism measures. He reiterated that diplomatic assurances were not legally binding and undermined existing obligations of States to prohibit torture, were ineffective and unreliable in ensuring the protection of returned persons, and therefore should not be resorted to by States. The Special Rapporteur continued to focus on the absolute prohibition on torture in the context of counter-terrorism measures in his report to the General Assembly (A/61/x). His report highlighted the principle of non-admissibility of evidence extracted by torture in article 15 of the Convention against Torture, including a review of recent court decisions which illustrate an increasing trend towards the use of "secret evidence" put forward by prosecuting and other authorities in judicial proceedings. He recalled that in the light of well-founded allegations of torture, under article 15 the burden of proof shifts to the State to prove that evidence invoked against an individual has not been obtained by torture. The Special Rapporteur also reported on the implications of the entry into force of the Optional Protocol to the Convention against Torture.

15. The Independent Expert on minority issues in her report (E/CN.4/2006/74) expressed deep concern about the proliferation of counter-terrorism measures that violate the rights of minority communities and create a climate that emboldens

abusive individuals. Some communities, including ethnic and religious minorities, are disproportionately affected by counter-terrorism measures, including the use of emergency powers in relation to normal judicial processes. Counter-terrorism measures should be implemented in full consideration of minority rights and, in times of public emergency, measures restricting other rights must not be discriminatory on the grounds of race, colour, sex, language, religion or social origin.

16. The Special Rapporteur on extrajudicial, summary or arbitrary executions addressed the issue of "shoot to kill" policies in his report (E/CN.4/2006/53), recalling that the use of lethal force by law enforcement officers must be regulated within the framework of human rights law. When States confronting the threat of suicide bombers adopt policies permitting the use of lethal force without prior warnings, a graduated use of force or clear signs of an imminent threat, they must provide alternative safeguards to ensure the right to life. States must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and post-incident accountability phases of State responsibility; and ensure that officers are aware that there is no legal basis for shooting to kill for any reason other than near certainty that to do otherwise will lead to loss of life.

17. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people reported on the situation in some countries where the State has confronted the social struggles, claims and protests of the indigenous organizations with the implementation of terrorist laws (E/CN.4/2006/78). He reminded States that, when ordinary crimes are committed under the umbrella of these movements, ordinary laws should be sufficient for the maintenance of law and order.

18. In a joint report released in February 2006 (E/CN.4/2006/120), five mandate-holders of special procedures reported on their investigation on the situation of detainees held at the United States of America Naval Base at Guantánamo Bay. In their joint report, the independent experts highlighted their concerns related to the arbitrary nature of detentions; violations of judicial guarantees; the lack of access for detainees to competent and independent tribunals; the inhuman and degrading nature of the conditions of detention, in some cases amounting to torture; the harmful impact of those conditions on the health of detainees; and the attacks against the religious beliefs and dignity of the detainees. The mandate-holders recommended, inter alia, that individuals suspected of committing acts of terrorism be detained in accordance with criminal procedures that respect the safeguards enshrined in international law; that any allegation of torture or cruel, inhuman or degrading treatment or punishment be thoroughly investigated by an independent authority; that no detainee be expelled, returned or extradited to States where there were substantial grounds for believing that they would be in danger of being tortured; and that the Guantánamo Bay detention facilities be closed without further delay.

19. Over-incarceration and the use of secret prisons in the context of countering terrorism are considered in the report of the Working Group on Arbitrary Detention (E/CN.4/2006/7). The Working Group urged States to stop running secret prisons and detention facilities, and stated that in the context of international cooperation in the fight against terrorism, the transfer of suspected individuals between States

should always rest on a sound legal basis, as with arrangements for extradition, deportation, expulsion, transfer of proceedings or transfer of sentenced persons. Judicial control of the admission into or holding in all detention facilities should be secured.

20. The Working Group on Enforced or Involuntary Disappearances expressed its grave concern that anti-terrorist activities were being used by an increasing number of States as an excuse for not respecting the obligations of the Declaration, and noted a strong trend since 2001 whereby many States explained disappearances with reference to counter-terrorism (E/CN.4/2006/56). In some countries, authorities use the need to combat terror as a justification for repression of opposition groups, which at times has led to disappearances. The reported use of "extraordinary rendition" and the alleged existence in a number of countries of secret detention centres, which created situations inviting further abuse including disappearance, was also of great concern. The Working Group reminded all Governments that, under article 7 of the Declaration, "[n]o circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances", including any type of counter-terrorist campaign (para. 594).

21. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addresses issues related to terrorism and counter-terrorism in his updated study on "Political platforms which promote or incite racial discrimination" (E/CN.4/2006/54), as well as in his annual report (E/CN.4/2006/16) and his report on the "Situation of Muslims and Arab peoples in various parts of the world since the events of 11 September 2001" (E/CN.4/2006/17).

22. In her report to the Commission on Human Rights, the Special Representative of the Secretary-General on human rights defenders noted that, while a few States have adopted national laws reflecting the international obligations contained in the Declaration, the overall trend has been for States to adopt new laws restricting the space for human rights activities, particularly in the context of measures to fight terrorism (E/CN.4/2006/95). Failure to adopt comprehensive protection strategies, which would not only take into account physical safety but also address impunity, have allowed for serious violations against defenders to continue. In her report to the General Assembly, the Special Representative expressed her concerns that restrictions imposed on freedom of assembly have been liberally applied to prohibit or disrupt peaceful human rights assemblies, frequently on the pretext of maintenance of public order and increasingly relying on counter-terrorism legislation, arguments and mechanisms. Furthermore, the Special Representative considered Governments' reliance on national security laws when reacting to exposure or criticism of their human rights practices to be one of the major factors threatening the safety of defenders. She urged States to bear in mind the importance of ensuring and maintaining the contextual space for the activities of human rights defenders, including the right to peaceful assembly, in combination with the rights entailed in relation to freedom of expression and association.

23. The Working Group on the use of mercenaries as a means of violating human rights and impeding the right of peoples to self-determination reported to the General Assembly on the activities of mercenaries and private security companies

implicated in acts of terrorism, and discussed the legal definition of "mercenaries" as it relates to acts of terrorism (A/61/xx).

### Human rights treaty bodies

24. The United Nations human rights treaty bodies have continued to take up issues related to terrorism in their examinations of State party reports and individual complaints. For example, in its consideration of the second report of the United States of America (CAT/C/USA/CO/2), the Committee against Torture expressed its concern over the use by the State party of secret detention facilities where detainees were allegedly deprived of fundamental legal safeguards, including an oversight mechanism in regard to their treatment and review procedures with respect to their detention. It further noted the lack of a federal definition of torture, consistent with article 1 of the Convention, and that, despite the occurrence of cases of extraterritorial torture of detainees, no prosecutions had been initiated under the extraterritorial criminal torture statute. In its concluding observations, the Committee urged the State party to recognize and ensure that the Convention applied at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction. It recommended that the State party apply the non-refoulement guarantee to all detainees in its custody, cease the rendition of suspects to States where they face a real risk of torture, and ensure that suspects had the possibility to challenge decisions of refoulement. The State party should also register all persons it detains in any territory under its jurisdiction, as one measure to prevent acts of torture, and ensure that no one is detained in any secret detention facility under its effective control.

25. The Human Rights Committee, in its consideration of the combined second and third periodic reports of the United States of America (CCPR/C/USA/CO/3), expressed a number of concerns, including the potentially over-broad reach of the definitions of terrorism under domestic law; the practice by the State party of detaining people secretly and in secret places for months and years, as well as holding people, beyond the stated need to remove them from the battlefield, in places where their enjoyment of the protection of domestic or international law was blocked or substantially curtailed; provisions of the Patriot Act which might be incompatible with article 17 of the Covenant; the use of interrogation techniques which, either individually or used in combination and/or applied over a protracted period of time, violated the prohibition in article 7; allegations of suspicious deaths and torture or cruel, inhuman or degrading treatment or punishment by its agents as well as contract employees, in detention facilities in Guantanamo, Afghanistan, Iraq and other overseas locations; and provisions of the Detainee Treatment Act, which bar detainees in Guantanamo from seeking review in case of allegations of ill-treatment or poor conditions of detention. Other serious concerns included the practice of the State party of sending, or assisting in the sending of, suspected terrorists to third countries, either from the United States or other States' territories, for purposes of detention and interrogation, without the appropriate safeguards to prevent treatment prohibited by the Covenant.

26. In its recommendations, the Committee urged the State party to immediately abolish all secret detention and secret-detention facilities, grant prompt access by the International Committee of the Red Cross to any person detained in connection with an armed conflict, and detain persons only in places in which they could enjoy the full protection of the law. It recommended that the State party take all necessary

measures to ensure that individuals, including those it detained outside its own territory, not be returned to another country by way of, inter alia, their transfer, rendition, extradition, expulsion or refoulement if there are substantial reasons for believing that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment. The State party should conduct thorough and independent investigations into the allegations that persons had been sent to third countries where they had undergone torture or cruel, inhuman or degrading treatment or punishment, modify its legislation and policies to ensure that no such situation recur, and provide appropriate remedy to the victims. Further, it should ensure that interference in one's privacy be conducted only where strictly necessary, under protection of the law, and that appropriate remedies be made available to the affected person.

27. The Human Rights Committee also addressed issues related to disappearances, incommunicado detention and trial in absentia in three recent decisions. The case of *Bousroual* v. *Algeria* involved a communication submitted by Ms. Bousroual on behalf of her husband, Mr. Salah Saker, an Algerian national who had been missing since 29 May 1994. The Committee addressed the fact that Mr. Sakar had been removed from his home by State agents, apparently "on suspicion that he was a member of a terrorist group"; that the author claimed that her husband's arrest was made in the absence of a warrant, and that the State party had failed to indicate the legal basis on which the author's husband was subsequently transferred to military custody. The Committee concluded, inter alia, that the detention was arbitrary and recalled that the author's husband had no access to counsel during his incommunicado detention, which prevented him from challenging the lawfulness of his detention during that period. The right to be brought "promptly" before a judicial authority implied that delays must not exceed a few days and incommunicado detention as such might violate article 9, paragraph 3. The Committee referred to its general comment No. 6 concerning article 6 (right to life) of the Covenant, which provides that States parties should take specific and effective measures to prevent the disappearance of individuals and establish facilities and procedures to investigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which might involve a violation of the right to life. It found that the State party was under an obligation to provide Ms. Bousroual with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's husband, his immediate release if he was still alive, adequate information resulting from its investigation transmitted to the author, and appropriate levels of compensation for the violations suffered by the author's husband, the author and the family. It reminded the State party of its duty to prosecute criminally, try and punish those held responsible for such violations, as well as to take measures to prevent similar violations in the future.

28. In *Boucherf* v. *Algeria*, a complaint submitted by Ms. Boucherf on behalf of her son, Mr. Riad Boucherf, who was removed from his home by State agents and has been missing since 25 July 1995, the Committee recalled the definition of enforced disappearance in article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court: "Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the

protection of the law for a prolonged period of time." Any act of such disappearance constitutes a violation of several rights enshrined in the Covenant, including the right to liberty and security of the person (art. 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10), as well as violating or constituting a grave threat to the right to life (art. 6). The Committee found violations by the State party of articles 7 and 9 of the Covenant in relation to the author's son, and article 7 in relation to the author, in conjunction with a violation of article 2, paragraph 3, of the Covenant. The Committee addressed similar questions in a third recent case, *Medjnoune* v. *Algeria*, and found violations of articles 7 and 9 in relation to the author's son.

29. In July 2006, the Human Rights Committee also discussed its revised general comment on article 14 of the International Covenant on Civil and Political Rights on the right to a fair trial and equality before the courts and tribunals (CCPR/C/GC/32/CRP.1/Rev.1). The revised general comment notes that the right to a fair trial and to equality before the courts and tribunals are key elements of human rights protection and serve by procedural means to safeguard the rule of law. Article 14 of the Covenant aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights, including that all persons should be equal before the courts and tribunals; that in criminal or civil cases everyone had a right to a fair and public hearing by a competent, independent and impartial tribunal; that everyone charged with a criminal offence should have the right to be presumed innocent until proved guilty according to law; and that everyone convicted of a crime should have the right for his conviction and sentence to be reviewed by a higher tribunal according to law. The Committee will continue its consideration of the revised general comment at its forthcoming sessions.

**Sub-Commission on the Promotion and Protection of Human Rights**

30. The Sub-Commission on the Promotion and Protection of Human Rights for many years has addressed issues related to terrorism and human rights, including through thematic studies on issues such as the administration of justice through military tribunals, the relationship between international humanitarian law and human rights law, and the promotion of human rights while countering terrorism. At its fifty-fifth session, the Sub-Commission in its resolution 2003/15 requested a study on the compatibility of counter-terrorism measures adopted at the national, regional and international level with existing international human rights standards, giving particular attention to their impact on the most vulnerable groups, "with a view to elaborating detailed guidelines" and appointed Kalliopi K. Koufa to coordinate this effort. In 2004, the Sub-Commission decided to establish a sessional working group with a mandate to "elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, based, inter alia, on the preliminary framework draft of principles and guidelines contained in the working paper prepared by Ms. Koufa". The working group considered an expanded working paper on guidelines and principles for promoting and protecting human rights while countering terrorism at the fifty-seventh session of the Sub-Commission.

31. At its fifty-eighth session, the Sub-Commission established a sessional working group with the mandate to continue to elaborate detailed principles and

guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, based, inter alia, on the updated framework draft principles and guidelines contained in the second expanded working paper prepared by Ms. Kalliopi K. Koufa (A/HRC/Sub.1/58/30). The working paper emphasized the need for clear and detailed guidelines on the observance and protection of human rights in the fight against terrorism in order to give guidance to States and contribute to efforts to balance security interests with full respect for human rights. It also emphasized that any guidelines and principles must be interpreted in the light of general principles of international law, with attention to the emergence of norms of customary international law, and provided reflections on the issue of derogations. The working paper provided an updated "Framework draft of principles and guidelines concerning human rights and terrorism", including provisions and detailed commentary related to the duties of States regarding terrorist acts and human rights; general principles relating to counter-terrorism measures; counter-terrorism measures and the definition of terrorism; exceptions and derogations; specific principles relating to arrest, detention and trial; penalties; asylum, forcible transfers and extradition; freedom of opinion and expression; freedom of thought, conscience and religion; privacy and property rights; freedom of association and assembly; and the rights of victims of terrorist acts.

32. At the conclusion of its fifty-eighth session, the Sub-Commission endorsed the recommendations of the working group, requested Ms. Koufa to update the preliminary framework draft of principles and guidelines based on the discussions in the working group, and decided to transmit to the Human Rights Council the updated framework draft, with relevant commentary, for its consideration, while recognizing that the draft would necessitate further elaboration and work. The Sub-Commission recommended to the Human Rights Council that consideration be given, in its review of the system of expert advice, to the continuation of the working group in order to ensure the continuation of the work to elaborate principles and guidelines concerning the promotion and protection of human rights when combating terrorism.

## III. Approach of the High Commissioner for Human Rights: diplomatic assurances and transfers of individuals suspected of terrorist activity

33. The High Commissioner for Human Rights has continued to examine the question of the protection of human rights and fundamental freedoms while countering terrorism and to make general recommendations about the obligations of States in this regard. In her statement to mark Human Rights Day in December 2005, the High Commissioner voiced her concerns in relation to two related phenomena which are having an acutely corrosive effect on the global ban on torture and cruel, inhuman or degrading treatment. The first is the practice of having recourse to diplomatic assurances to justify the return and "rendering" of suspects to countries where they face a risk of torture; the second is the holding of prisoners in secret detention. The High Commissioner called on all Governments to reaffirm their commitment to the total prohibition of torture by prohibiting torture and cruel, inhuman or degrading treatment and prohibiting it in national law; abiding by the principle of non-refoulement and refraining from returning persons to countries where they may face torture; ensuring access to prisoners and abolishing secret

detention; prosecuting those responsible for torture and ill-treatment; prohibiting the use of statements extracted under torture, whether the interrogation has taken place at home or abroad; and ratifying the Convention against Torture and its Optional Protocol, as well as other international treaties banning torture.

34. The High Commissioner has further examined human rights questions raised by the responses of Governments to terrorist activities.[1] She highlighted issues related to the role of national courts in supervising counter-terrorism measures, including fair trial rights and the use of special and military courts; the definition of terrorism and related offences in national legislation, such as the question of criminalizing the legitimate exercise of rights and freedoms; the principle of non-discrimination and the issue of the techniques used to screen terrorist suspects; the protection of vulnerable groups, including human rights defenders, non-citizens and journalists; the determination of a state of emergency and/or of the existence of an armed conflict; the deprivation of liberty, including judicial and administrative detention, incommunicado detention and secret detention; the right to privacy, and questions of methods of investigation, and information collection and sharing; and the right to property, including compiling lists and freezing assets of persons suspected of terrorism. She again voiced her concern on the alleged use of secret detention centres and of irregular transfers of persons suspected of engagement in terrorist activities which, she noted, would allow Governments to detain such persons without legal process and obtain information from them using interrogation methods that may be impermissible under national or international law. She also raised serious concerns over the use of diplomatic assurances to justify the return and transfer of suspects to countries where they face a risk of torture.

35. On the issue of diplomatic assurances, the High Commissioner contributed to the discussions at the Council of Europe Group of Specialists on Human Rights and the Fight Against Terrorism, emphasizing her view that diplomatic assurances did not work as they did not provide adequate protection against torture and ill-treatment, nor did they nullify the obligation of non-refoulement. Rather than developing criteria to regulate such practices, she urged, national and international efforts to eradicate torture must focus first and foremost on prevention, including through the establishment of systems of regular visits by independent international and national bodies to places where people are deprived of their liberty. A State must take active measures to investigate allegations where there is credible information that individuals are being transported by or through a State to a place where they faced a real risk of torture. The High Commissioner urged all States to ratify the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and its Optional Protocol as an important practical measure of good faith and meaningful commitment to preventing torture and ill-treatment, and protecting the human rights of those within their jurisdiction. The Office of the High Commissioner also contributed to the discussions which resulted in the Council of Ministers' recommendation on assistance to victims of crime, including victims of terrorism.

36. The High Commissioner examines these issues in further depth in her report to the Commission on Human Rights (E/CN.4/2006/94), which is awaiting consideration by the Human Rights Council, and provides an overview of the activities of the Office of the High Commissioner as well as other recent developments with bearing on the protection of human rights while countering terrorism. The report considers issues related to transfers of individuals suspected to

be linked to terrorism and the practice of seeking diplomatic assurances against torture and cruel, inhuman or degrading treatment or punishment, and addresses how such practices infringe on the protection of human rights. The High Commissioner reiterates that the actions of States to combat terrorism must fully comply with States' obligations under international law and concludes her report with a number of recommendations, including an appeal to States to reinforce their efforts to eradicate torture and cruel, inhuman or degrading treatment or punishment.

37. The High Commissioner welcomed the entry into force of the Optional Protocol to the Convention against Torture on 22 June 2006 as a significant development towards ensuring the protection of detainees around the world. The Optional Protocol, adopted on 18 December 2002 by the General Assembly, strengthens the Convention against Torture by establishing an international Subcommittee on the Prevention of Torture with a mandate to visit places of detention in States parties. It also requires States parties to set up national preventive mechanisms, which are also to be provided with access to places of detention and prisoners.

**Other developments**

38. The Sixth High-Level Meeting between the Secretary-General and Heads of Regional and Other Intergovernmental Organizations mandated a Working Group, led by the Office of the High Commissioner for Human Rights, to pursue the development of a flexible mechanism of interaction on the protection of human rights in counter-terrorism action. The High-Level Meeting requested Organizations to submit specific proposals on ways in which the mechanism can be developed, taking into account the variety of mandates and working methods of the regional and other intergovernmental organizations. The mandate of the Working Group was discussed on 23 February 2006, in the context of the First Meeting of the Standing Committee of the High-Level Meeting between the Secretary-General and Heads of Regional and Intergovernmental Organizations, and on 10 July the Working Group met during the Composite Meeting of Working Groups preparatory for the Seventh High-Level Meeting. The Working Group explored options for ensuring regular consultations and exchanges between the United Nations and regional organizations on counter-terrorism measures and concluded with a proposal that the Seventh High-Level Meeting should call on the United Nations, particularly the Office of the High Commissioner for Human Rights, to establish a web-based link to facilitate interaction and exchanges between all focal points in the United Nations and regional and other intergovernmental organizations involved in the work of the Working Group; and on the Office of the High Commissioner to organize a meeting of experts, specialists and lawyers on human rights and counter-terrorism to discuss the difficulties and challenges in balancing counter-terrorism measures with the requirements of international law including human rights law, humanitarian law, refugee law and criminal law.

39. The Office of the High Commissioner is organizing an expert workshop, jointly with the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, on human rights and international cooperation in the context of counter-terrorism. The meeting is in follow-up to the OHCHR seminar on human rights, counter-terrorism and states of emergency, which took place in June 2005, and will aim to enhance understanding and awareness of

human rights norms and standards in international cooperation in matters related to counter-terrorism, in particular among security experts and legal advisers from relevant national ministries, law enforcement and the judiciary. The Office has worked with the United Nations Office on Drugs and Crime (UNODC) to deliver a specialized training programme for judges and prosecutors in combating terrorism. The Office also participated in a meeting organized by UNODC for West and Central African Governments in May 2006, on national legal frameworks for countering terrorism, and provided input related to the compliance of national counter-terrorism measures with States' obligations under international human rights law, international humanitarian law and refugee law. OHCHR is developing a number of tools such as fact sheets on terrorism and human rights, and on the relationship between international humanitarian law and human rights law.

## IV. Conclusions

40. **The United Nations human rights system continues to address the question of the protection of human rights and fundamental freedoms while countering terrorism with a view to assisting Member States in abiding by their international human rights obligations while effectively combating terrorism.**

41. **The High Commissioner for Human Rights, human rights treaty bodies and various special-procedure mandate-holders of the Human Rights Council all have expressed grave concerns regarding the alleged use, by some Member States, of secret detention centres and the practice of irregular transfers of persons suspected of engagement in terrorist activities. Serious concerns also have been expressed over the use of diplomatic assurances to justify the return and transfer of suspects to countries where they may face a risk of torture.**

42. **Member States should reaffirm their commitment to the total prohibition of torture by prohibiting torture and cruel, inhuman or degrading treatment in national law; prosecuting those responsible for torture and ill-treatment; and prohibiting the use of statements extracted under torture, whether the interrogation has taken place at home or abroad. Measures should be taken to ensure access to all prisoners in all places of detention, and to abolish places of secret detention. Further, Member States should abide by the principle of non-refoulement and refrain from returning persons to countries where they may face torture.**

43. **The entry into force of the Optional Protocol to the Convention against Torture on 22 June 2006 is a significant development towards ensuring the protection of detainees around the world. The Optional Protocol strengthens the Convention against Torture by establishing an international Subcommittee on the Prevention of Torture with a mandate to visit places of detention in States parties and requiring States parties to set up national preventive mechanisms, which are also to be provided with access to places of detention and prisoners. The adoption by the Human Rights Council of the International Convention for the Protection of All Persons from Enforced Disappearance is an important step towards further strengthening the rule of law in countering terrorism. Member States should be encouraged to ratify and implement the Convention against Torture and its Optional Protocol as an important practical measure of good faith and meaningful commitment to preventing torture and**

**ill-treatment. Further, the General Assembly is urged to consider the adoption of the Convention for the Protection of All Persons from Enforced Disappearance.**

*Notes*

[1] Address by Louise Arbour, United Nations High Commissioner for Human Rights, at Chatham House and the British Institute of International and Comparative Law, 15 February 2006, available at www.ohchr.org.